

**City of Houston, Texas, Ordinance No. 2013-\_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF HOUSTON, TEXAS, RELATING TO CONSUMER PROTECTION AND REGULATION OF CREDIT ACCESS BUSINESSES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

\* \* \* \* \*

**WHEREAS**, the City Council of the City of Houston finds and determines that lending practices employed by various credit access businesses, commonly referred to as payday loan or title loan institutions, are currently subject to only limited state regulations; and

**WHEREAS**, because of such limited regulation and in spite of borrower's best intentions, there are those that suffer financial setbacks after they obtain credit and have difficulty repaying their financial obligations; and

**WHEREAS**, the City Council finds and determines that local regulation of credit access businesses would substantially curtail the likelihood of borrowers becoming trapped in a cycle of debt, affording the borrowers who utilize such institutions the opportunity to reduce their indebtedness while still affording the industry member institutions the opportunity to receive a fair return on their investment; and

**WHEREAS**, the City Council desires to adopt an ordinance implementing a regulatory scheme establishing minimum business practices for credit access businesses; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** The findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

**Section 2.** That Chapter 28 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article XIV that reads as follows:

**"ARTICLE XIV  
CONSUMER PROTECTION**

**DIVISION 1. CREDIT ACCESS BUSINESSES**

*Subdivision A. General Provisions*

**Sec. 28-451. Purpose of article.**

The purpose of this article is to protect the welfare of the citizens of the City of Houston by monitoring credit access businesses in an effort to keep borrowers from becoming trapped in a cycle of debt. To this end, this article establishes a registration program for credit access businesses, imposes restrictions on extensions of consumer credit made by credit access businesses, and imposes recordkeeping requirements on credit access businesses.

**Sec. 28-452. Definitions.**

In this article:

*Certificate of registration* means a certificate of registration issued by the director under this article to the principal parties of a credit access business.

*Consumer* means an individual who is solicited to purchase or who purchases the services of a credit access business.

*Credit access business* has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.

*Deferred presentment transaction* has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.

*Director* means the director of the department of administrative and regulatory affairs and includes any representatives, agents, or department employees designated by the director.

*Extension of consumer credit* has the meaning given that term in Section 393.001 of the Texas Finance Code, as amended.

*Motor vehicle title loan* has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.

*Person* has the meaning already attributed to the term in section 1-2 of this Code.

*Principal party* has the meaning given that term in Rule Section 83.3001 of Chapter 83 of Title 7 of the Texas Administrative Code.

*Registrant* means a person issued a certificate of registration for a credit access business under this article and includes all principal parties of the credit access business identified in the registration application filed under this article.

*Responsible person* means, for each of the registrant's offices, the person with substantial on-site management responsibility for operations.

*State license* means a license to operate a credit access business issued by the Texas Consumer Credit Commissioner under Chapter 393, Subchapter G of the Texas Finance Code, as amended.

**Sec. 28-453.           Violations; penalty.**

(a) A person who violates a provision of this article, or who fails to perform an act required of the person by this article, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued.

(b) An offense under this article is punishable as provided in section 1-6 of this Code.

(c) The penalties provided for in subsection (b) are in addition to any other enforcement remedies that the city may have under city ordinances and state law.

**Sec. 28-454.           Defense.**

It is a defense to prosecution under this article that at the time of the alleged offense the person was not required to be licensed by the state as a credit access business under Chapter 393, Subchapter G of the Texas Finance Code, as amended.

**Secs. 28-455—28-470.   Reserved.**

*Subdivision B. Registration of Credit Access Businesses*

**Sec. 28-471. Registration required.**

A person commits an offense if the person acts, operates, or conducts business as a credit access business without a valid certificate of registration for each business location.

**Sec. 28-472. Registration application.**

(a) To obtain a certificate of registration for a credit access business, a person must submit an application to the director on a form provided for that purpose by the director. The application must contain the following:

- (1) The name, street address, mailing address, facsimile number, and telephone number of the applicant.
- (2) The business or trade name, street address, mailing address, facsimile number, and telephone number of the credit access business, including each separate business location.
- (3) The names, street addresses, email addresses, and mailing addresses, of all principal parties and responsible persons of the credit access business.
- (4) A copy of a current, valid state license held by the credit access business.
- (5) The non-refundable application fee stated for this provision in the city fee schedule.

(b) An applicant or registrant shall notify the director within 45 days after any material change in the information contained in the application for a certificate of registration, including, but not limited to, any change of address and any change in the status of the state license held by the applicant or registrant.

**Sec. 28-473. Issuance and display of certificate of registration; presentment upon request.**

(a) The director shall issue to the applicant a certificate of registration upon receiving a completed application under section 28-472 of this Code.

(b) A certificate of registration issued under this section must be conspicuously displayed to the public in the credit access business. The certificate of registration must be presented upon request to the director or any peace officer for examination.

**Sec. 28-474. Expiration and renewal of certificate of registration.**

(a) A certificate of registration expires on the earlier of:

- (1) One year after the date of issuance; or
- (2) The date of expiration, revocation, or other termination of the registrant's state license.

(b) A certificate of registration may be renewed by making application in accordance with section 28-472 of this Code. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

**Sec. 28-475. Nontransferable.**

A certificate of registration for a credit access business is not transferable.

**Secs. 28-476—28-490. Reserved.**

*Subdivision C. Miscellaneous Requirements for Credit Access Businesses*

**Sec. 28-491. Maintenance of records.**

(a) A credit access business shall maintain a complete set of records of all extensions of consumer credit obtained by the credit access business, which shall include the following information:

- (1) The name and address of the consumer.
- (2) The principal amount of cash actually advanced.
- (3) The documentation used to establish a consumer's income under section 28-492 of this Code.

(b) A credit access business shall maintain a copy of each written agreement between the credit access business and a consumer evidencing an extension of consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer).

(c) A credit access business shall maintain copies of all quarterly reports filed with the Texas Consumer Credit Commissioner under Section 393.627 of the Texas Finance Code, as amended.

(d) The records required to be maintained by a credit access business under this section shall be retained for at least three years and made available for inspection by the city upon request during the usual and customary business hours of the credit access business. The Director shall adopt policies and procedures to ensure that when copies of the quarterly reports maintained under (c) above are inspected by the city, the same shall be subject to applicable confidentiality provisions established under state law, including provisions related to the protection of borrower personal financial information and credit access business information.

**Sec. 28-492. Restrictions on extensions of consumer credit.**

(a) *Deferred presentment transactions.*

(1) The proceeds of a deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining shall not exceed:

- a. Thirty-five percent of the consumer's gross monthly income for a single payment transaction; or
- b. Twenty-five percent of the consumer's gross monthly income for a scheduled payment on a multiple payment transaction.

(2) a. When a customer requests an application for a multiple payment deferred presentment transaction, a credit access business shall advise the consumer that city ordinance requires the business to also notify the consumer of the terms for an alternative single payment transaction. After a consumer's application for a multiple payment deferred presentment transaction is approved, and prior to the execution of documents evidencing the transaction, a credit access business shall provide the consumer a notice written in Vietnamese, Mandarin Chinese, Spanish or

English at the consumer's choice, comparing in simple, straightforward terms the total cost of the multiple payment transaction with a single payment transaction of the same dollar amount. The total cost of the multiple payment transaction shall include the amount of every payment, including interest, fees and principal, and a figure representing the sum of all of the payments. The total cost of the single payment transaction shall include every minimum payment required to refinance the initial transaction four consecutive times, every principal payment required under a no-cost extended payment plan as described in section 28-492(a)(3)b, and a figure representing the sum of all of the payments.

- b. If the credit access business assists consumers in obtaining single payment deferred presentment transactions in the normal course of its business, the total cost of the single payment transaction shall be based on the terms available to the consumer for a single payment transaction in the same amount as the multiple payment transaction. A consumer may elect to decline the approved multiple payment deferred presentment transaction and apply for a single payment transaction without cost or penalty.
  - c. If the credit access business does not assist prospective borrowers in obtaining single payment deferred presentment transactions in the normal course of its business, the total cost of the single payment transaction shall be calculated using an interest rate of 10% per annum with a credit access business fee equal to the Average CAB Fee Charged Per Transaction (Line 10B) from the most recent Quarterly CAB Data Report issued by the Office of the Consumer Credit Commissioner.
- (3) A consumer who is unable to fully repay the fourth refinance of an initial single payment deferred presentment transaction may elect to repay the transaction by means of an extended payment plan, provided the consumer is not otherwise in default of such transaction. For the purposes of this subsection, a 'refinance' means any transaction a credit access business assists a consumer in obtaining that extends the repayment period of a then-outstanding deferred

presentment transaction beyond its original term. A refinance shall include both a traditional refinance that is evidenced by new written loan documents with new disclosures that satisfy and replace the prior loan documents, as well as a renewal of a single-payment transaction in which the term of the transaction is extended for an additional identical time period. 'Refinance' includes the terms 'renewal' and 'rollover.'

- a. At every licensed location, a credit access business engaging in deferred presentment transactions shall notify a consumer of the consumer's right to an extended payment plan by posting the following notice, in Vietnamese, Mandarin Chinese, Spanish and English, in a conspicuous location visible to the general public: 'If you are unable to repay your deferred presentment transaction when due, you may be eligible for an extended payment plan. You are eligible for an extended payment plan if you have refinanced your initial transaction four times. If you meet the requirements for an extended payment plan, we will offer you such a plan before the due date of your existing transaction. To accept our offer of an extended payment plan, you must sign a written agreement that describes the terms of the plan on or before the due date of your existing transaction.' The notice shall also be included, in at least 12-point bold type, on the first page of a contract with a credit access business.
- b. An extended payment plan shall comply with the following:
  - [1] A credit access business shall offer to assist an eligible consumer, as described in paragraph (a) (3) of this section, in obtaining an extended payment plan for a deferred presentment transaction.
  - [2] A credit access business shall offer a consumer an extended payment plan on or before the due date of the fourth refinance of a deferred presentment transaction. A deferred presentment transaction that a credit access business obtains for a consumer or assists a



consumer in obtaining may not be refinanced more than four times.

- [3] During an extended payment plan a credit access business shall not charge the consumer any additional interest or fees, including any additional credit access fees, except those fees allowed by state law in the event of default.
  - [4] A consumer must sign a written agreement that describes the terms of the extended payment plan on or before the due date of the existing transaction.
  - [5] An extended payment plan shall allow a consumer to repay all outstanding amounts owing in at least four substantially equal payments, each of which shall be at the same or longer interval as in the initial transaction.
  - [6] A consumer may prepay an extended payment plan in full at any time without penalty.
- c. If a consumer continues to make timely payments pursuant to an extended payment plan, a credit access business is prohibited from:
- [1] Engaging in collection activities with respect to such deferred presentment transaction; and
  - [2] Obtaining, or assisting the consumer in obtaining, additional deferred presentment transactions or other extensions of consumer credit.
- (4) A multiple payment deferred presentment transaction shall be payable on a fully-amortizing, declining principal balance basis with substantially equal payments as agreed upon by the parties. Fees may be pre-computed or charged on a daily accrual method. If fees are pre-computed, a credit access business shall refund unearned fees calculated on a daily pro rata basis upon the prepayment in full of a deferred presentment transaction. A multiple payment deferred presentment transaction shall not be refinanced.

(b) *Motor vehicle title loans.*

- (1) The proceeds of a motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining shall not exceed the lesser of:
  - a. Six percent of the consumer's gross annual income; or
  - b. Seventy percent of the retail value of the motor vehicle.
- (2) The retail value of a motor vehicle shall be based upon nationally or regionally recognized motor-vehicle appraisal guides if the vehicle is listed in such guides. If a value for the motor vehicle is not listed in such guides, then the credit access business and the consumer shall agree in good faith on an appropriate retail value for the vehicle using generally available information relating to such motor vehicle.
- (3) a. When a customer requests an application for a multiple payment motor vehicle title loan, a credit access business shall advise the consumer that city ordinance requires the business to also notify the consumer of the terms for an alternative single payment auto title loan. After a consumer's application for a multiple payment motor vehicle title loan is approved, and prior to the execution of documents evidencing the transaction, a credit access business shall provide the consumer a written notice written in Vietnamese, Mandarin Chinese, Spanish or English at the consumer's choice, comparing in simple, straightforward terms the total cost of the multiple payment motor vehicle title loan with a single payment auto title loan of the same dollar amount. The total cost of the multiple payment transaction shall include the amount of every payment, including interest, fees and principal, and a figure representing the sum of all of the payments. The total cost of the single payment transaction shall include every minimum payment required to refinance the initial transaction six consecutive times, every principal payment required under a no-cost extended payment plan as described in section 28-492(b)(4)b,

and a figure representing the sum of all of the payments.

- b. If the credit access business assists consumers in obtaining single payment auto title transactions in the normal course of its business, the total cost of the single payment transaction shall be based on the terms available to the consumer for a single payment transaction in the same amount as the multiple payment transaction. A consumer may elect to decline the approved multiple payment auto title transaction and apply for a single payment transaction without cost or penalty.
  - c. If the credit access business does not assist prospective borrowers in obtaining single payment auto title transactions in the normal course of its business, the total cost of the single payment transaction shall be calculated using an interest rate of 10% per annum with a credit access business fee equal to the Average CAB Fee Charged Per Transaction (Line 10B) from the most recent Quarterly CAB Data Report issued by the Office of the Consumer Credit Commissioner.
- (4) If a single payment motor vehicle title loan is refinanced for an additional period, beginning with the first such refinance and with each successive refinance thereafter, the consumer must reduce the principal balance of the loan by at least five percent of the original amount of the proceeds of such loan advanced to the consumer. If the consumer fails to pay the amount necessary to reduce the principal at the time of any refinance as required herein, the lender and credit access business may nevertheless allow the loan to be refinanced provided that the credit access business calculates its fee with respect to such refinanced loan as if the required reduction payment had been made. The amount of the required reduction that remains unpaid continues to be due and owing from the consumer, but that unpaid amount of any required reduction is not entitled to accrue additional credit access fees thereafter. A consumer who is unable to fully repay the sixth refinance of a single payment motor vehicle title loan may elect to repay the transaction by means of an extended payment plan, provided the consumer is not otherwise in default of such transaction. For the purposes of

this subsection, a 'refinance' means any transaction a credit access business assists a consumer in obtaining that extends the repayment period of a then-outstanding motor vehicle title loan beyond its original term. A refinance shall include both a traditional refinance that is evidenced by new written documents with new disclosures that satisfy and replace the prior loan documents, as well as a renewal of a single-payment transaction in which the term of the transaction is extended for an additional time period. 'Refinance' includes the terms 'renewal' and 'rollover.' A single payment motor vehicle title loan shall not be refinanced more than six times. Except as otherwise provided herein, the proceeds of each refinance of a motor vehicle title loan must reduce the total loan principal owed by the consumer by at least five percent.

- a. At every licensed location, a credit access business engaging in motor vehicle title loans shall notify a consumer of the consumer's right to an extended payment plan by posting the following notice, in Vietnamese, Mandarin Chinese, Spanish and English, in a conspicuous location visible to the general public: 'If you are unable to repay your motor vehicle title loan when due, you may be eligible for an extended payment plan. You are eligible for an extended payment plan if you have refinanced your initial transaction six times. If you meet the requirements for an extended payment plan, we will offer you such a plan before the due date of your existing transaction. To accept our offer of an extended payment plan, you must sign a written agreement that describes the terms of the plan before the due date of your existing transaction.' The notice shall also be included, in at least 12-point bold type, on the first page of a contract with a credit access business.
- b. An extended payment plan shall comply with the following:
  - [1] A credit access business shall offer a consumer an extended payment plan on or before the due date of the sixth refinance of a motor vehicle title loan.

- [2] During an extended payment plan a credit access business shall not charge the consumer any additional interest or fees, including any additional credit access fees, except those fees allowed by state law in the event of default and repossession.
  - [3] A consumer must sign a written agreement that describes the terms of the extended payment plan on or before the due date of the existing transaction.
  - [4] An extended payment plan shall allow a consumer to repay all outstanding amounts owing in at least four substantially equal payments, each of which shall be at the same or longer interval as in the initial transaction.
  - [5] A consumer may prepay an extended payment plan in full at any time without penalty.
- c. If a consumer continues to make timely payments pursuant to an extended payment plan, a credit access business is prohibited from:
  - [1] Engaging in collection activities with respect to such motor vehicle title loan; and
  - [2] Obtaining, or assisting the consumer in obtaining, additional motor vehicle title loan transactions or other extensions of consumer credit.
- (5) A multiple payment motor vehicle title loan shall be payable on a fully-amortizing, declining principal balance basis with substantially equal payments as agreed upon by the parties. Fees may be pre-computed or charged on a daily accrual method. If fees are pre-computed, a credit access business shall refund unearned fees calculated on a daily pro-rata basis upon the prepayment in full of a motor vehicle title loan. A multiple payment motor vehicle title loan shall not be refinanced.
- (6) Notwithstanding other law to the contrary, a motor vehicle title loan shall provide that the consumer shall have no

personal liability with respect to the amount owed pursuant to either the motor vehicle title loan agreement or credit access agreement or any deficiency resulting from foreclosure against the motor vehicle pledged by the consumer, unless the consumer defrauds the lender and/or credit access business by:

- a. Pledging a motor vehicle that is not owned by the consumer free of other liens or encumbrances without disclosing such fact to the lender and/or credit access business;
- b. Selling or pledging the motor vehicle to a third-party after the vehicle has been pledged to either the lender or credit access business without the lender's and/or credit access business's consent; or
- c. Intentionally damaging or concealing the motor vehicle after it has been pledged to either the lender and/or credit access business.

(c) *General provisions.*

- (1) In determining a consumer's gross income, whether monthly or annual, a credit access business may utilize payroll documents, checks, bank statements and reports from nationally or regionally recognized credit and data reporting companies, and may rely on the representations of a consumer to form a reasonable belief about the consumer's gross income.
- (2) For purposes of this section, an extension of consumer credit that is made to a consumer within five days after a previous extension of consumer credit for a single payment transaction (whether a single payment deferred presentment transaction or a single payment motor vehicle title transaction) has been paid by the consumer will constitute a refinancing or renewal."

**Section 3.** That the City Council hereby approves the application fee attached hereto and incorporated herein as Exhibit A. The Director of Finance shall incorporate the attached approved fee in the City Fee Schedule.

**Section 4.** That the Director of the Department of Administration and Regulatory Affairs shall commence accepting, processing, and issuing certificates of registration required under Article XIII of Chapter 28 of the Code of Ordinances, Houston, Texas, on the ninetieth day following the date of passage and approval of this Ordinance. Any certificates issued prior to the effective date of this Ordinance shall be postdated to become effective on the effective date of this Ordinance.

**Section 5.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 6.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on June 1, 2013.

**PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2013.

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Mayor of the City of Houston

Prepared by Legal Dept. \_\_\_\_\_  
LWS:asw 01/10/2013 Senior Assistant City Attorney  
Requested by Honorable Annise D. Parker, Mayor  
L.D. File No. \_\_\_\_\_